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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,383	04/30/2004	Mark Wayne Domanico	LUX-031149	3382

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EXAMINER


YAO, SAMCHUAN CUA

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 11/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s) 	
	10/709,383	DOMANICO, MARK WAYNE	
	Examiner	Art Unit	
	Sam Chuan C. Yao	1733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over the current state of the art as evidence from the teachings of either (Parkay et al (US 5,742,955), Saladino (US 4,043,853) or May (US 5,650,228)) in view of JP 61225454 A and (Huber et al (US 6,164,021) or JP 05009454 A).

With respect to claims 1 and 9-10, it is a current state of the art to adhesively bond a preformed bath-liner to an existing bathtub, where the bath-liner applied to the bathtub such that it follows the contour of the bathtub as exemplified in the teachings of either (Parkay et al (col. 1 lines 6-23; col. 3 lines 1-10; col. 5 lines 37-51; col. 6 lines 12-19; figures 1-6), Saladino (col. 7 line 18 to col. 8 line 41; figures 5A-5G) or May (abstract; col. 3 line 38 to col. 4 line 50; figures 1-3). While not explicitly disclosed, it is understood that, in adhesively bonding a bath-liner to an existing bathtub, pressure must be exerted in order to effectively bond the bath-liner to the existing bathtub and to properly configured the bath-liner to the shape/contour of the

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bathtub. In any event, such would have been obvious in the art as such is conventional in the art.

The current state of the art differs from claim 1 as presently recited in that, the current state of the art does not disclose using a foamable polyurethane. However, it would have been obvious in the art to use a foamable polyurethane adhesive/sealant for bonding a bath-liner to an existing bathtub, because: a) it is old in the art to form a water-proof lining to a floor, roofing of buildings by adhesively bonding a water-proof film onto a base structure using a foamable polyurethane adhesive, where the structure is made of concrete, asphalt, metal, slate, etc. as exemplified in the teachings of JP '454 (abstract); and, b) Huber teaches using a foamable polyurethane adhesive for bonding roof tile which is made of *"ceramic, brick, stone, clay, plastic, wood, metal, rubber or bituminous materials"* onto a base of a roof and for forming water-tight seal around *"most troublesome areas"* *"to prevent the infiltration of wind-driven rain, hail or snow"* (col. 1 line 18 to col. 2 line 47) or JP '454 teaches using a foamable polyurethane type adhesive for forming water-tight bonding of PVC pipes, panels, etc. (abstract).

With respect to claim 2, see column 5 lines 9-16 of the May patent.

With respect to claim 3, a foamable polyurethane adhesive which is applied onto a bath-liner is naturally flexible and expandable.

With respect to claims 4-5, it is a notoriously common practice in the art to apply a foamable polyurethane adhesive by spraying or pouring.

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With respect to claim 6, see figures 1-3 of the May patent or figure 5 of the Parkay et al patent.

With respect to claim 7, see figures 3-4 of the Parkay et al patent.

With respect to claim 8, it is a notoriously common practice in the art to caulk any visible gaps in a bathroom to prevent water from seeping into the gaps.


Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sam Chuan C. Yao whose telephone number is (571) 272-1224. The examiner can normally be reached on Monday-Friday with second Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Dunn can be reached on (571) 272-1171. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Sam Chuan C. Yao
Primary Examiner
Art Unit 1733

Scy
11-07-05